

*In the Matter of the State Voluntary Furlough Program for Fiscal Year 2011*  
CSC Docket No. 2010-3825  
**(Civil Service Commission, decided June 23, 2010)**

Various employees of the Department of Environmental Protection (DEP) and the Department of Law and Public Safety (DLPS) petition the Civil Service Commission (Commission) to extend its relaxation of the eligibility criteria for the voluntary furlough program through fiscal year 2011.

By way of background, in *In the Matter of the State Voluntary Furlough Program Fiscal Year 2010* (CSC, decided June 24, 2009), for the eighth time since fiscal year 2003, the Commission relaxed the eligibility criteria for the voluntary furlough program to permit voluntary furloughs to be requested and taken for a period of unlimited duration. The Commission emphasized that the sole basis for its continued relaxation of the criteria for voluntary furlough was the State's continuing fiscal crisis. Additionally, in *In the Matter of Continuation of the State Voluntary Program for Fiscal Year 2009* (CSC, decided January 14, 2009), the Commission underscored its concern that continued utilization of unlimited voluntary furlough is not equitable since it constructively converts part-time employment to full-time employment via the furlough program. In this regard, it noted that continued relaxation of the voluntary furlough rules would be fundamentally unfair to the State's actual part-time workers who forgo paid health benefits. Finally, the Commission indicated that since the adoption of the voluntary furlough rule in January 1995, the eligibility requirements had been relaxed for 6.5 of the 14 years the rule has been in existence (now 8 of the 15.5 years it has been in existence) and it encouraged these petitioners to utilize the rule making process to achieve their desired goals with respect to the voluntary furlough program.<sup>1</sup>

In their submissions to the Commission, the petitioners from the DEP state that given the fact that the State's fiscal situation has not significantly improved, continued relaxation of the eligibility criteria for voluntary furlough is justified. Specifically, they underscore that during fiscal year 2010, the administration recognized the cost saving potential by requiring employees to take 10 mandatory unpaid furlough days. Thus, permitting continued voluntary furlough would only further cost savings to the State. They also state that even while on voluntary furlough, most employees complete a full work load and are available when necessary, even on scheduled days off, to complete necessary projects. Accordingly, since approval for voluntary furlough is approved and evaluated by managerial and supervisory staff, the petitioners maintain that this creates a "win-win" situation

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<sup>1</sup> The Chairperson of the Commission has received two petitions to amend the voluntary furlough rule and notices of denial of those petitions have been sent to the petitioners and will be published in the *New Jersey Register*.

for both the employee and the DEP. The petitioners further state that discontinuation of the rule relaxation would disproportionately impact working mothers since furlough is primarily used for maternity leave to care for small children and discontinuation of the program would make it difficult to make child care arrangements. Finally, the petitioners underscore that the Commission had instructed State departments to identify viable alternatives to voluntary furlough, and to date, no alternatives have been identified or offered. As such, to change the long-standing rule relaxation, with no advance notice, would be fundamentally unfair and could lead to the loss of valued employees if they are unable to arrange acceptable care for their children.

The petitioners from DLPS request continued relaxation of the eligibility criteria for the voluntary furlough until such time as their petition to amend the voluntary furlough rules is acted on by the Commission. The petitioners emphasize that the State's continuing fiscal crisis, which was relied on by the Commission in prior years as a basis to relax the rule, continues. Additionally, they state that the program continues to be an administrative tool that reduces expenditure in direct salary costs. Similar to the DEP petitioners, they maintain that the DLPS does not provide alternative flexible work arrangements. Further, they note that they continue to pay 1.5% of their total annual salary toward health care costs, that most of them continue to carry full-time case loads, and that they have not received raises since July 1, 2007. Thus, pending the rule making process, these petitioners request that the Commission maintain the *status quo* and keep the enhanced voluntary furlough program in place.

It is noted that all State appointing authorities were provided an opportunity to submit comments to the Commission regarding relaxation of the rules concerning voluntary furlough. In response, Daniel W. Foster, Administrator, DLPS, maintains that continuation of the rule relaxation for voluntary furlough would benefit the DLPS. Specifically, he states that DLPS has carefully considered alternatives to the voluntary furlough program, such as telecommuting, part-time employment, and job sharing. However, "they cannot be offered universally due to the differing workloads and staffing requirements in the multiple work units within the DLPS." Given the multiple benefits of the voluntary furlough program, such as lessening the need for involuntary measures such as a reduction in force and the flexibility it provides in how the agency deploys its shrinking personnel resources, the DLPS is in favor of continued rule relaxation. The Commission did not receive comments from any other appointing authority.

## CONCLUSION

*N.J.A.C.* 4A:6-1.23(a) states that the purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work

without pay in a *calendar year*, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status. *N.J.A.C. 4A:6-1.23(d)1* states that an employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. The employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension days in accordance with regulations of the State Health Benefits Commission.

The petitioners present that their competing family obligations and work responsibilities, the asserted lack of viable alternatives offered by their respective departments, in conjunction with the State's bleak fiscal outlook and the relatively short time frame in which the petitioners received notice that the enhanced voluntary furlough program benefits were expiring, warrant continued relaxation of the voluntary furlough rules. Indeed, several of the petitioners stated that they have come to rely on continued relaxation of the rule when making arrangements necessary to accommodate their work and personal obligations and many emphasize that they continue to be responsible for a full-time caseload while being paid less than a full-time salary.

While the Commission is cognizant of the many benefits relaxation of the voluntary furlough rules provide to State employees, it is reluctant to continue the practice of relaxing the eligibility criteria for the voluntary furlough program. Although many of the petitioners state that they essentially perform work duties equivalent to full-time employees while on voluntary furlough, the Commission cannot ignore the fact that the continued relaxation of the criteria for the voluntary furlough program constructively can turn full-time positions into part-time positions that receive the same benefits as full-time employees. It is not the public policy of this State to provide health care benefits to part-time employees. *See N.J.S.A. 52:14-17.26* and *N.J.A.C. 17:9-4.2*. Thus, after relaxing the rules in order to permit unlimited utilization of voluntary furlough for eight consecutive years, the Commission must now simply address if continued relaxation is warranted from both a fiscal and workforce planning perspective.

A review of the use of extended voluntary furlough by State employees indicates that in calendar year 2009, 54 State employees took 31 or more days of voluntary furlough. The estimated expenditure on salary and benefits for these employees was \$3,582,166 (\$4,371,140 in annual salary and health benefits for the 54 employees, less \$788,974 in salary savings resulting from the 54 employees' participation in voluntary furlough). If the work of the 54 employees – who are designated full-time but work part-time hours due to extended voluntary furlough – had been done by 54 permanent part-time employees (working the same schedule of

76.2% of full-time, and at the same daily pay rate), expenditures for their salaries would have been approximately \$2,618,136.63. Thus, the State would have saved \$964,030 in health benefits costs by using 54 part-time employees to work the same number of hours and at the same pay rate as the 54 full-time employees who took extended voluntary furlough in 2009. Alternatively, if the State had allowed the 54 employees to take extended furlough but required them to pay 100% of the cost of benefits for furlough days in excess of 30, approximately \$118,400 (daily benefit cost of \$68.40 multiplied by the number of furlough days beyond 30) would have been saved. Thus, while prior relaxation of the voluntary furlough rules did achieve some direct salary savings and could accommodate employee needs, the State's ongoing fiscal crisis demands that the Commission ensure that the State's human resources are deployed in the most cost effective and operationally efficient manner. Stated differently, continued relaxation of the voluntary furlough rules is no longer a viable fiscal option to address the staggering budget crisis.

It is also difficult to justify continued relaxation of the rule from both an equitable and workforce planning perspective. As noted above, in 2009, 54 State employees, out of the Executive Branch workforce in 2009 of 70,582 employees, took 31 or more days of voluntary furlough. Of these 54 employees who took extended furlough in 2009, 34 were from the DEP and DLPS (23 DEP and 11 DLPS). Thus, .00076 of the Executive Branch workforce utilized extended furlough in 2009. However, 62% of those utilizing extended furlough were employed either at the DEP or DLPS. In 2008, 159 State employees, out of the Executive Branch workforce in 2008 of 72,850 employees, took 31 or more days of voluntary furlough. Of these 159 employees who took extended furlough in 2008, 84 were from the DEP and DLPS (56 DEP and 28 DLPS). As such, .00218 of the Executive Branch workforce utilized extended furlough in 2008. However, 52% of those utilizing extended furlough were employed either at the DEP or DLPS. In other words, the rule relaxation has disproportionately benefited a minute portion of the Executive Branch workforce – concentrated within the DEP and DLPS. This is fundamentally unfair. Additionally, the State has an obligation to utilize its human resources in the most efficient manner to deliver service to the public. This requires maximum utilization of all positions designated as full-time. In this regard, it cannot be ignored that since 2008, the DEP has lost 290 full-time positions and the DLPS has lost 354 full-time positions. Therefore, it is imperative that all positions designated as full-time be utilized in the most efficient, cost effective manner necessary to deliver public services. The voluntary furlough rule *as it exists* provides a generous benefit to State employees that balances the needs of both the State and its employees.

Nevertheless, in assessing the competing interests presented by the petitioners, including their understandable belief that the rules would be again relaxed, and to facilitate their personal planning obligations, the Commission finds that it is appropriate to permit employees to take up to 30 days off from work without pay from July 1, 2010 to December 31, 2010, with accrual of leave time,

anniversary dates and seniority treated as if the employee is in pay status and without loss of leave time or health benefits coverage for participating employees as if the start of the calendar year began on July 1, 2010. As of January 1, 2011, the provisions of *N.J.A.C. 4A:6-1.23* will be applied and a new 30 day limit for voluntary furlough to include health benefits coverage will start. In calendar year 2011, an employee who wishes to extend a voluntary furlough beyond 30 days may request, pursuant to the existing rule, up to 60 days' furlough extension leave without pay. This furlough extension leave shall be taken in blocks of 10 work days, which need not be consecutive. During furlough extension leave, accrual of leave time, anniversary dates and seniority shall be treated as if the employee is in pay status. The employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension days in accordance with regulations of the State Health Benefits Commission. The Commission emphasizes in no uncertain terms that it will not be relaxing the rules governing voluntary furlough in calendar year 2011. Therefore, the petitioners are on notice that they should take the necessary steps to address their personal situations.

With respect to the merits of each of their personal situations, the petitioners in this matter argue that the DEP's and DLPS' lack of meaningful response on how they plan to accommodate the needs of their employees through alternatives other than extended voluntary furlough warrants continued relaxation of the voluntary furlough rules. The Commission disagrees. The rules governing the permitted alternatives are permissive in nature and the Commission does not have the authority to mandate that an appointing authority participate in any of these programs. *See N.J.A.C. 4A:6-2.6, N.J.A.C. 4A:6-2.7, and N.J.A.C. 4A:6-2.8.* However, while further availability and utilization of such voluntary programs may lessen the need for more draconian measures should State revenue projections continue to fall, for the reasons stated earlier, the Commission finds that continued relaxation of the voluntary furlough rules is not fiscally prudent nor does it provide appointing authorities with the appropriate means for future workforce planning. Unfortunately, the fiscal crisis now facing this State overshadows the importance of whether the DLPS or the DEP made plans to accommodate the needs of their employees consistent with their operational requirements through alternatives other than voluntary furlough. As previously observed, the precarious fiscal situation of this State now requires maximum utilization of all positions designated as full-time. Nonetheless, although the State cannot pay for health benefits for part-time employees, the Commission does encourage all State appointing authorities to use permissible alternatives to achieve their operational goals, including the use of part-time employees, particularly if that would assist employees such as the petitioners to balance their family and work obligations.

## **ORDER**

Therefore, it is ordered that these petitions be denied but it is appropriate to permit employees who are granted voluntary furlough by their appointing authorities to take up to 30 days off from work without pay from July 1, 2010 to December 31, 2010, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status and without loss of leave time or health benefits coverage for participating employees as if the start of the calendar year began on July 1, 2010. As of January 1, 2011, the provisions of *N.J.A.C. 4A:6-1.23* will be applied and a new 30 day limit for voluntary furlough to include health benefits coverage will start. In calendar year 2011, an employee who wishes to extend a voluntary furlough beyond 30 days may request up to 60 days' furlough extension leave without pay. This furlough extension will only be approved in accordance with the current rule and the employee may continue health benefits by paying the full premium amount (employer's and employee's share) for the furlough extension days.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.